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FM AMEMBASSY HANOI
TO AMEMBASSY BANGKOK IMMEDIATE
AMEMBASSY PHNOM PENH IMMEDIATE
AMCONSUL HO CHI MINH IMMEDIATE
SECSTATE WASHDC IMMEDIATE 9094

C O N F I D E N T I A L HANOI 000091

DEPT FOR CA A/S JACOBS, EAP/EX, EAP/MLS, CA/EX
BANGKOK FOR CA A/S JACOBS
PHNOM PHEN FOR CA A/S JACOBS

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TAGS: [CMGT](#) [CASC](#) [PREL](#) [VM](#)

SUBJECT: SCENESETTER FOR A/S JACOBS VISIT TO VIETNAM

REF: (A) 08 HANOI 1334 (B) 08 STATE 1344 (C) HANOI 82

Classified By: Classified by Ambassador Michael Michalak for reasons 1.4 b,d.

¶1. (C) Summary: Post welcomes your visit to Hanoi and Ho Chi Minh City. Coming at a time when the GVN,s overall desire to attract tourism and investment has created a window of opportunity for deepening our relations and improving the ability for U.S. citizens to live and work here, your visit creates an opportunity to open a dialogue with the government of Vietnam (GVN) on modernizing our consular relations by reducing notarials and expanding visa reciprocity. It will also help to cement recent movement towards Vietnam,s accession to the Hague Convention on Adoptions, including the implementation of meaningful legal reform. However, while Post hopes that your visit will let us focus on the future, it is likely that addressing long standing disagreement on the boundaries of consular district of the Consulate General in Ho Chi Minh City will be the GVN,s primary issue. End Summary.

Consular District

¶2. (C) While the Vienna Convention on Consular Relations states that consular districts will be defined by the sending state subject to the approval of the receiving state, in practice, in virtually every country but Vietnam, the sending state is generally free to define their own consular districts. Citing security reasons, Vietnam has taken the unique position of limiting the de jure consular district of ConGen HCMC to Ho Chi Minh City itself. However, in the 1997 exchange of letters that established ConGen HCMC, the USG informed Vietnam that we intended to operate as if the consular district included all provinces south of and including Thua Thien Hue.

¶3. (C) This arrangement is challenging, logistically and legally. For officers at ConGen HCMC to work outside of the official district, they need permission from the GVN, a process which takes at least five work days and, occasionally, results in travel denial. In recent months, the MFA has been particularly likely to refuse to allow trips by the ConGen HCMC's consular Fraud Prevention Unit (FPU). Officers working outside of the district without GVN permission lack consular immunity and are therefore subject to detention by the GVN. While we have been able to operate outside of the district without permission in emergency ACS cases and some fraud cases, this is not guaranteed. In one notable incident, in October 2007, local police evicted a fraud prevention team from their hotel room in the middle of the night and ordered them to return immediately to HCMC.

¶4. (C) In the run up to Prime Minister Dung's 2008 visit to the U.S., the GVN informed us of their desire to open a consulate in Houston (apparently after talking about the move with Texan President Bush at APEC) and a visa only consulate in New York. While welcoming these moves in principle, the

Department informed the GVN that permission to open these facilities was linked to resolution of the HCMC consular district issue and permission to open a future U.S. consulate in Danang. The GVN responded by offering to expand the consular district to nine provinces, which are essentially suburbs of HCMC, a proposal the Department rejected.

¶15. (C) Post understands that the Prime Minister has a strong personal interest in the opening of Houston and personally ordered the GVN to sweeten the offer. In December, the GVN "informally" proposed a 22 province consular district for ConGen HCMC, in exchange for permission to open New York and Houston. We countered with a proposal for 23 provinces and Danang in exchange for Houston. The GVN rejected this saying that 22 provinces was their best and final offer.

¶16. (C) Our GVN interlocutors have told us that they want to reach closure on this issue during your visit. However, they appear to believe that the solution is U.S. capitulation to the GVN proposal. In fact, in an effort to help make Houston a fait accompli, they officially announced their first consul general to Houston on February 3. While Post would like to lock in the 22 province expansion, we believe that giving the GVN everything that it wants in return for a partial solution on our side is unwise (The GVN's 1997 promise to reevaluate the issue took 11 years to materialize.) Further, we find the GVN's argument that security concerns are the primary reason for limiting the consular district to be ludicrous, especially given that the GVN is actively promoting business and tourism in some of the provinces they say are "too sensitive" to include in the HCMC consular district.

¶17. (C) Our conversations with the GVN have exposed significant differences between different offices regarding this issue. The Ministry of Public Security is, according to the MFA, actively opposed to any solution because of their suspicion that ConGen HCMC's primary purpose is to support anti-GVN forces and destabilize the GVN. The Prime Minister's Office (Office of the Government) appears to be primarily interested in getting permission for Houston. The Ministry of Foreign Affairs, however, sees New York as a deal breaker, in part, we suspect, because Vietnamese Embassies and Consulates are allowed to retain a percentage of visa fees, both to support the missions and to compensate diplomats. This lack of coordination significantly complicates any resolution to the issue. While MFA has the lead, it is clear that they cannot unilaterally change the proposal, and that they may be unilaterally holding back a deal in order to get New York.

¶18. (C) Given the GVN's deep desire to expand their consular presence in the U.S., Post believes that in this case the GVN needs a deal more than we do. While expansion of the Consular District would be a significant improvement for ConGen HCMC, we have lived with the current set up for over 10 years, and can continue to operate this way for the foreseeable future. Thus, we recommend that in your interactions with the GVN, you should encourage the GVN to accept an interim position of an agreement of 22 provinces and permission to open Danang in exchange for Houston. Under this approach both sides get 80% of their requests and we can continue discussions to resolve the remaining 20%.

Adoption

¶19. (SBU) Over the past six months there have been significant changes in the area of adoption. First, with U.S. leadership, we have formed an inter-embassy adoption working group, with representatives from 13 countries and UNICEF. The working group's primary focus is to encourage Vietnam to join the Hague Adoption Agreement and to encourage legal reform to bring adoption practices to international standards. During your visit you will have a chance to meet with the Ambassadors from several working group countries and to have a multilateral meeting with the Ministry of Justice to support these goals.

¶10. (SBU) The combination of international pressure to join the Hague and the spotlight that has been shown on adoption-related trafficking and corruption has caused the GVN to take action. The first steps have been increased law enforcement activities, including a recent case where the Vietnamese police arrested an orphanage worker and a facilitator on the basis of evidence supplied by the U.S. Embassy. The Ministry of Public Security is also pushing for an expansion of anti-trafficking laws to make it easier to prosecute crimes related to adoption.

¶11. (SBU) At the same time, the Ministry of Justice has reached out to UNICEF to seek assistance in reforming Vietnam's adoption system. The GVN has agreed to a UNICEF study reviewing existing legislation and practices to document irregularities and discrepancies with Hague standards. The study is fully funded and the team has been selected. UNICEF tells us that they expect the study will begin in late March and will last for six months. The MOJ has also requested UNICEF technical support with drafting a new adoption law. According to UNICEF, MOJ hopes the new law will be adopted in the fall of 2010. MOJ appears to be more comfortable operating under this multilateral umbrella than we a series of bilateral issues and advisers.

¶12. (SBU) These changes create an opportunity to transform Vietnam into a model state for international adoptions. Post believes that the best way forward is to strongly support the UNICEF study and to work with our international partners and the Ministry of Labor, Invalids and Social Affairs to develop a mechanism for accurately determining the number of orphans in Vietnam and the percentage of children for whom family preservation, domestic adoption, or international adoption is applicable. Armed with this data, we can work multilaterally with the working group to provide technical assistance to the GVN in the drafting and implementation of new legislation that will clear the way for a resumption of adoptions between the U.S. and Vietnam.

HCMC Staffing

¶13. (SBU) Economic, demographic and other factors have rapidly driven up the demand for consular services at ConGen HCMC. Over the past two years demand for non-immigrant visas has more than doubled, as has the number of U.S. citizens resident in the consular district. However, staffing has remained stagnant. Additionally, HCMC's Fraud Prevention Unit (FPU) currently has an approximate 6 month backlog in cases to be investigated, with no foreseeable reduction in new cases submitted to FPU for investigation. The recent economic down turn has slowed the visa growth rate somewhat, but only to 30% year-on-year in 2008 from the 40% we experienced in previous year. We expect that demand will accelerate rapidly in FY2010. To meet this need, we will need to significantly increase the number of officers in HCMC and expand our already overcrowded facility. The two new FSO positions approved by the Department are an important first step in this process, and we appreciate your efforts in getting Post these additional resources.

¶14. (SBU) In addition to expanding resources, we also need to reduce unnecessary demand. This can be done by creating a nationwide visa renewal program, encouraging the GVN to join the Hague convention on legalizations, and working with the GVN to expand visa reciprocity. Your visit creates an opportunity to open a dialog with the GVN on these issues and to create a mechanism for expanding our consular relationship and making exchanges and investment between of two countries easier.

MICHALAK